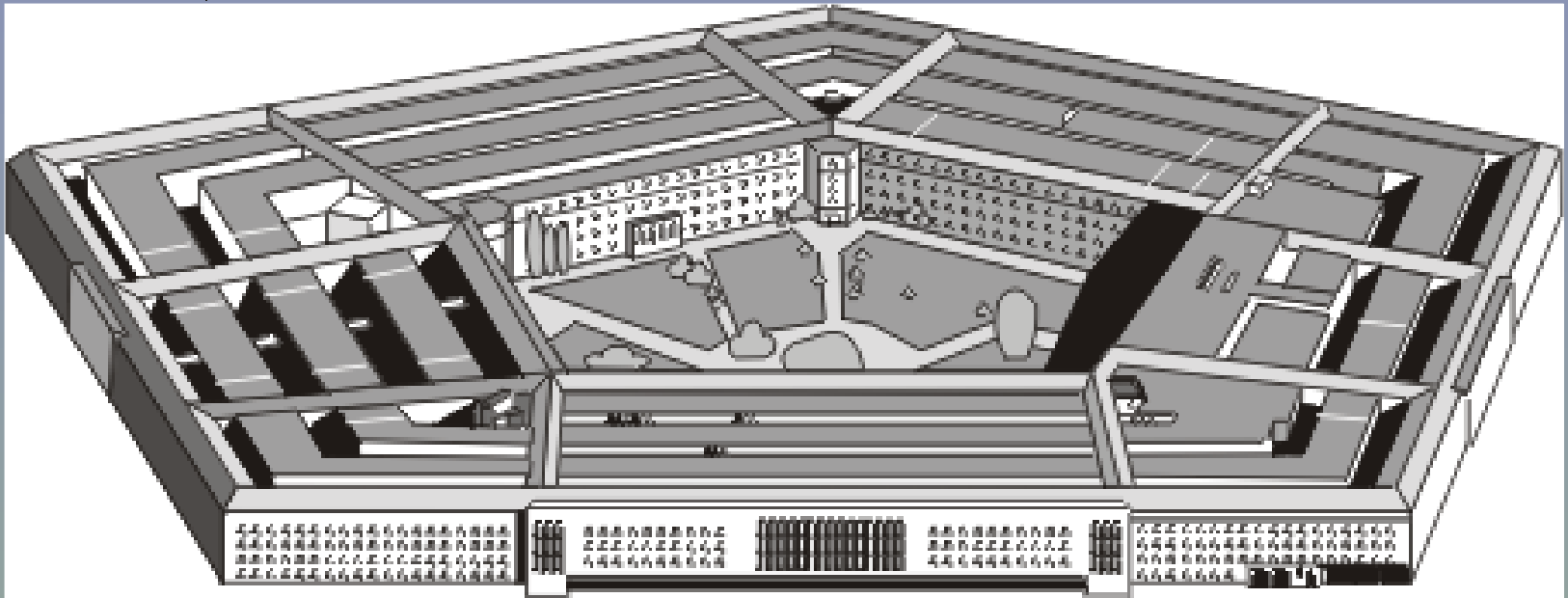


FREEDOM OF INFORMATION ACT



DEPARTMENT OF DEFENSE

Office of Freedom of Information and Security Review

**[http://www.defenselink.mil/pubs/foi/
index.html](http://www.defenselink.mil/pubs/foi/index.html)**

DOD DIRECTIVE 5400.7

**“IT IS THE POLICY OF THE DEPARTMENT OF DEFENSE
TO MAKE AVAILABLE TO THE PUBLIC THE
MAXIMUM AMOUNT OF INFORMATION
CONCERNING ITS OPERATIONS AND ACTIVITIES...”**

**“THE POSSIBILITY THAT RELEASE...MAY CAUSE
EMBARRASSMENT BY SUGGESTING
ADMINISTRATIVE ERROR OR INEFFICIENCY MAY
NOT BE CONSIDERED IN DETERMINING WHETHER
IT SHOULD BE RELEASED...”**

DOD IMPLEMENTATION OF FOIA

- **DIRECTOR, ADMINISTRATION AND MANAGEMENT**

- **DIRECTS AND ADMINISTERS DOD PROGRAM**
- **ISSUES INSTRUCTIONS AND GUIDANCE**
DOD DIRECTIVE 5400.7
DOD REGULATION 5400.7-R
- **ADMINISTERS OSD PROGRAM**
DOD INSTRUCTION 5400.10

- **GENERAL COUNSEL**

- **PROVIDE LEGAL INTERPRETATION AND ASSISTANCE**

DEPARTMENT OF DEFENSE COMPONENTS

- OFFICE OF THE SECRETARY OF DEFENSE/JOINT STAFF
 - UNIFIED COMBATANT COMMANDS
- DEPARTMENT OF ARMY
- DEPARTMENT OF NAVY
- DEPARTMENT OF AIR FORCE
- DEFENSE INFORMATION SYSTEMS AGENCY
- DEFENSE CONTRACT AUDIT AGENCY
- DEFENSE CONTRACT MANAGEMENT AGENCY
- DEFENSE INTELLIGENCE AGENCY
- DEFENSE SECURITY SERVICE
- DEFENSE LOGISTICS AGENCY
- DEFENSE THREAT REDUCTION AGENCY
- NATIONAL GEOSPATIAL-INTELLIGENCE AGENCY
- NATIONAL SECURITY AGENCY/CENTRAL SECURITY SERVICE
- OFFICE OF THE INSPECTOR GENERAL
- DEFENSE FINANCE AND ACCOUNTING SERVICE
- NATIONAL RECONNAISSANCE OFFICE

THE FOIA PROCESS

- **INITIAL REQUEST**
 - **IDENTIFY AGENCY/COMPONENT FOR SEARCH**
 - **REVIEW RESPONSIVE INFORMATION**
 - **REPLY AND ADVISE OF APPEAL RIGHTS OR REFER TO ANOTHER AGENCY**
- **APPEAL**
 - **CONDUCT ANOTHER SEARCH/REVIEW**
 - **SEND TO APPELLATE AUTHORITY FOR FINAL ADJUDICATION**
 - **ADVISE OF RIGHT TO SEEK JUDICIAL RELIEF**

- FOIA -

MAJOR FEATURES

- **ANY PERSON MAY REQUEST OFFICIAL RECORDS**
- **REASONABLE IDENTIFICATION OF REQUESTED RECORDS**
- **NINE EXEMPTIONS**
- **20 WORKING DAYS FOR INITIAL REQUESTS**
- **20 WORKING DAYS FOR APPEALS**
- **UNIFORM FEE SCHEDULE AND GUIDELINES**
- **ANNUAL REPORT ON FOIA TO CONGRESS**

1996 ELECTRONIC FREEDOM OF INFORMATION ACT

- **DIRECTS AN AGENCY TO PROVIDE A RECORD IN ANY FORM OR FORMAT REQUESTED IF THE RECORD IS REPRODUCIBLE IN THAT FORM OR FORMAT.**
 - **DIRECTS AGENCIES TO MAKE REASONABLE EFFORTS TO MAINTAIN ITS RECORDS IN FORMS OR FORMATS THAT ARE REPRODUCIBLE.**
- **REQUIRES AGENCIES TO SEARCH FOR RECORDS IN ELECTRONIC FORM, UNLESS SUCH EFFORT WOULD SIGNIFICANTLY INTERFERE WITH THE AGENCY'S AUTOMATED INFORMATION SYSTEM.**
- **ESTABLISHES MULTITRACK PROCESSING BASED ON AMOUNT OF WORK AND/OR TIME REQUIRED.**

1996 ELECTRONIC FREEDOM OF INFORMATION ACT (continued)

- **PROVIDES FOR NEGOTIATIONS BETWEEN AGENCIES AND REQUESTERS TO LIMIT THE SCOPE OF A REQUEST SO THAT IT MAY BE PROCESSED WITHIN AN AGREED TIME LIMIT.**
- **ESTABLISHES THAT BACKLOGS ARE NOT UNUSUAL CIRCUMSTANCES FOR DELAYS UNLESS AN AGENCY SHOWS REASONABLE PROGRESS IN REDUCING ITS BACKLOG.**

UNUSUAL CIRCUMSTANCES

1. LOCATION

2. VOLUME

**3. EXTERNAL
CONSULTATION**

1996 ELECTRONIC FREEDOM OF INFORMATION ACT (continued)

- **REQUIRES AN ESTIMATE OF AMOUNT OF MATERIAL DENIED UNLESS SUCH WOULD HARM AN INTEREST PROTECTED BY AN EXEMPTION.**

KEY CONCERNS OF THE FOIA

- ❑ **DISCLOSURE IS THE GENERAL RULE, NOT THE EXCEPTION.**
- ❑ **ALL INDIVIDUALS HAVE EQUAL RIGHTS OF ACCESS.**
- ❑ **THE BURDEN IS ON THE GOVERNMENT TO JUSTIFY THE WITHHOLDING OF A DOCUMENT, NOT ON THE PERSON WHO REQUESTS IT.**
- ❑ **INDIVIDUALS DENIED ACCESS TO DOCUMENTS HAVE A RIGHT TO SEEK INJUNCTIVE RELIEF IN THE COURTS.**

KEY PROCESSING ISSUES

- **CONDUCT A REASONABLE FILES SEARCH BASED ON REQUEST.**
- **REVIEW DOCUMENTS FOR REASONABLY SEGREGABLE MATERIAL.**
- **HAVE A *RESPONSE* READY WITHIN 20 DAY LIMIT.**

FREEDOM OF INFORMATION ACT

Exemptions

**(b) (1) APPLIES TO INFORMATION WHICH IS
CURRENTLY AND PROPERLY CLASSIFIED IN
THE INTEREST OF NATIONAL DEFENSE OR
FOREIGN POLICY, AS SPECIFICALLY
AUTHORIZED UNDER THE CRITERIA
ESTABLISHED BY EXECUTIVE ORDER 12958,
AS AMENDED.**

FREEDOM OF INFORMATION ACT

Exemptions

**EXTRACT FROM EXECUTIVE ORDER 12958,
AS AMENDED**

SEC 1.4. CLASSIFICATION CATEGORIES.

**INFORMATION MAY NOT BE CONSIDERED
FOR CLASSIFICATION UNLESS IT CONCERNS:**

- (a) MILITARY PLANS, WEAPONS SYSTEMS, OR
OPERATIONS;**
- (b) FOREIGN GOVERNMENT INFORMATION;**

FREEDOM OF INFORMATION ACT

Executive Order 12958, as amended

- (c) INTELLIGENCE ACTIVITIES (INCLUDING SPECIAL ACTIVITIES), INTELLIGENCE SOURCES OR METHODS, OR CRYPTOLOGY;**
- (d) FOREIGN RELATIONS OR FOREIGN ACTIVITIES OF THE UNITED STATES, INCLUDING CONFIDENTIAL SOURCES;**
- (e) SCIENTIFIC TECHNOLOGICAL, OR ECONOMIC MATTERS RELATING TO THE NATIONAL SECURITY, WHICH INCLUDES DEFENSE AGAINST TRANSNATIONAL TERRORISM;**

FREEDOM OF INFORMATION ACT

Executive Order 12958, as amended

**(f) UNITED STATES GOVERNMENT PROGRAMS FOR
SAFEGUARDING NUCLEAR MATERIALS OR
FACILITIES;**

**(g) VULNERABILITIES OR CAPABILITIES OF SYSTEMS,
INSTALLATIONS, INFRASTRUCTURES, PROJECTS,
PLANS OR PROTECTION SERVICES RELATING TO
THE NATIONAL SECURITY, WHICH INCLUDES
DEFENSE AGAINST TRANSNATIONAL
TERRORISM;**

(h) WEAPONS OF MASS DESTRUCTION

COMPILATION / MOSAIC

**EXECUTIVE ORDER 12958, AS AMENDED,
SECTION 1.7(e), ALLOWS FOR THE
CLASSIFICATION OF “COMPILATIONS OF ITEMS
OF INFORMATION THAT ARE INDIVIDUALLY
UNCLASSIFIED...IF THE COMPILED
INFORMATION REVEALS AN ADDITIONAL
ASSOCIATION OR RELATIONSHIP THAT...MEETS
THE STANDARDS FOR CLASSIFICATION...AND...
IS NOT OTHERWISE REVIEALED IN THE...
INFORMATION.”**

GLOMAR RESPONSE

- **AGENCY NEITHER CONFIRMS NOR DENIES THE EXISTANCE OF RECORDS RESPONSIVE TO A FOIA REQUEST.**
- **FIRST JUDICIALLY RECOGNIZED IN THE NATIONAL SECURITY CONTEXT, PHILLIPPI V. CIA.**
- **CAN BE APPLIED TO OTHER FOIA EXEMPTIONS AS WELL, PARTICULARLY PRIVACY, (6) AND (7)(C).**
- **JUSTIFIED ONLY WHEN THE CONFIRMATION OR DENIAL OF THE EXISTENCE OF RESPONSIVE RECORDS WOULD, IN AND OF ITSELF, REVEAL EXEMPT INFORMATION.**

GLOMAR RESPONSE

EXAMPLE

THE OFFICE OF THE DEPUTY UNDER SECRETARY OF DEFENSE FOR POLICY HAS DETERMINED THAT THE FACT OF THE EXISTANCE OR NONEXISTENCE OF RECORDS WHICH WOULD REVEAL A CONNECTION OR INTEREST IN THE MATTERS RELATING TO THOSE SET FORTH IN YOUR REQUEST IS CLASSIFIED IN ACCORDANCE WITH EXECUTIVE ORDER 12958, AS AMENDED. THEREFORE, PURSUANT TO 5 USC 552(b)(1), MS. JANE DOE, ASSISTANT DEPUTY UNDER SECRETARY OF DEFENSE FOR POLICY HAS DENIED YOUR REQUEST. BY THIS STATEMENT, THE DEPARTMENT NEITHER CONFIRMS NOR DENIES THAT SUCH RECORDS MAY OR MAY NOT

FREEDOM OF INFORMATION ACT

Exemptions

(b) (2) APPLIES TO INFORMATION WHICH PERTAINS

(HIGH) SOLELY TO THE INTERNAL PERSONNEL RULES AND PRACTICES OF THE AGENCY.

INFORMATION WHICH, IF RELEASED, WOULD ALLOW CIRCUMVENTION OF AN AGENCY RULE, POLICY, OR STATUTE, THEREBY IMPEDING THE AGENCY IN THE CONDUCT OF ITS MISSION, SUCH AS:

OPERATING RULES; GUIDELINES; AND MANUALS FOR INVESTIGATORS, AUDITORS, OR EXAMINERS.

EXAMINATION QUESTIONS AND ANSWERS USED FOR TRAINING, EMPLOYMENT OR PROMOTION.

FREEDOM OF INFORMATION ACT

Exemptions

(b) (3) APPLIES TO INFORMATION SPECIFICALLY EXEMPTED BY A STATUTE ESTABLISHING PARTICULAR CRITERIA FOR WITHHOLDING.

CONTRACTOR PROPOSALS, 10 USC 2305(g).

RESTRICTED DATA AND FORMERLY RESTRICTED DATA, 42 U.S.C. 2161-2165. ATOMIC ENERGY INFORMATION FROM ATOMIC ENERGY ACT OF 1954.

COMMUNICATIONS INTELLIGENCE, 18 U.S.C. 798.

UNCLASSIFIED TECHNICAL DATA WITH MILITARY OR SPACE APPLICATION, 10 USC 130.

FREEDOM OF INFORMATION ACT

Exemptions - (b)(3) Cont.

**PERSONNEL IN OVERSEAS, SENSITIVE, OR
ROUTINELY DEPLOYABLE UNITS, 10 USC 130b**

**CERTAIN SENSITIVE INFORMATION OF
FOREIGN GOVERNMENTS AND INTERNATIONAL
ORGANIZATIONS, 10 USC 130c**

**ORGANIZATIONAL AND PERSONNEL
INFORMATION FOR DIA, NRO, AND NGA, 10 USC
424**

**CIA FUNCTIONS AND INFORMATION, 50 USC
403(g)**

**NSA FUNCTIONS AND INFORMATION, 50 USC
402 NOTE SEC 6**

FREEDOM OF INFORMATION ACT

Exemptions

**(b) (4) APPLIES TO INFORMATION SUCH AS
TRADE**

**SECRETS AND COMMERCIAL OR
FINANCIAL INFORMATION OBTAINED FROM
A PERSON ON A PRIVILEGED OR
CONFIDENTIAL BASIS.**

**COMMERCIAL OR FINANCIAL INFORMATION
RECEIVED IN CONFIDENCE IN CONNECTION WITH
LOANS, BIDS, CONTRACTS, OR PROPOSALS.**

**TRADE SECRETS AND COMMERCIAL OR FINANCIAL
INFORMATION IN LOANS, BIDS, CONTRACTS OR
PROPOSALS.**

FREEDOM OF INFORMATION ACT

Exemptions - (b)(4) Cont.

WHEN THEY RECEIVE REQUESTS FOR CONFIDENTIAL COMMERCIAL INFORMATION, AGENCIES WILL NOTIFY THE SUBMITTER IN ACCORDANCE WITH EXECUTIVE ORDER 12,600 TO GIVE THE SUBMITTER AN OPPORTUNITY TO COMMENT ON THE RELEASE OF THE INFORMATION.

FREEDOM OF INFORMATION ACT

Exemptions

(b) (5) APPLIES TO INTER AND INTRA-AGENCY MEMORANDA WHICH WOULD NOT BE AVAILABLE BY LAW TO A PARTY OTHER THAN AN AGENCY IN LITIGATION WITH AN AGENCY.

THESE PRIVILEGES INCLUDE DOCUMENTS THAT:

ARE DELIBERATIVE IN NATURE AND ARE INVOLVED IN THE DECISION-MAKING PROCESS.

PERTAIN TO ATTORNEY WORK PRODUCT,

ARE SUBJECT TO ATTORNEY CLIENT PRIVILEGE.

FREEDOM OF INFORMATION ACT

Exemptions

(b) (6) APPLIES TO INFORMATION RELEASE OF WHICH WOULD CONSTITUTE A CLEARLY UNWARRANTED INVASION OF THE PERSONAL PRIVACY OF INDIVIDUALS.

SOCIAL SECURITY ACCOUNT NUMBERS.

DATES AND PLACES OF BIRTH.

MARITAL STATUS AND OTHER FAMILY INFORMATION.

RELIGION, RACE AND ETHNIC ORIGIN.

HEIGHT, AND WEIGHT.

INFORMATION CONCERNING RETIREMENT PLANS AND HEALTH/LIFE INSURANCE ELECTION.

UNSUCCESSFUL APPLICANTS FOR A POSITION

FREEDOM OF INFORMATION ACT

Exemptions - (b)(6) Cont.

**HOME ADDRESSES, TELEPHONE NUMBERS, AND
HOME E-MAIL ADDRESSES.**

MEDICAL FILES.

TYPES OF LEAVE.

CHARACTER OF MILITARY DISCHARGE.

PROMOTION RECOMMENDATIONS.

**SUPERVISORY ASSESSMENTS OF PROFESSIONAL
CONDUCT AND ABILITY.**

NAMES OF REFERENCES.

**PRIOR EMPLOYMENT UNRELATED TO EMPLOYEE'S
OCCUPATION.**

FREEDOM OF INFORMATION ACT

Exemptions - (b)(6) Cont.

AS OF NOVEMBER 9, 2001, AS A RESULT OF THE DECLARATION OF A NATIONAL EMERGENCY BY THE PRESIDENT ON SEPTEMBER 14, 2001, IT IS THE POLICY OF THE DEPARTMENT OF DEFENSE NOT TO RELEASE LISTS OF NAMES OF DOD PERSONNEL (TO INCLUDE MILITARY, CIVILIAN, AND CONTRACTOR PERSONNEL) TO THE PUBLIC UNDER THE FOIA.

FREEDOM OF INFORMATION ACT

Exemptions

(b) (7) APPLIES TO RECORDS OR INFORMATION COMPILED FOR LAW ENFORCEMENT PURPOSES THAT:

**(A) COULD REASONABLY BE EXPECTED TO
INTERFERE WITH LAW ENFORCEMENT
PROCEEDINGS,**

**(B) WOULD DEPRIVE A PERSON OF A RIGHT TO A
FAIR TRIAL OR IMPARTIAL ADJUDICATION,**

**(C) COULD REASONABLY BE EXPECTED TO
CONSTITUTE AN UNWARRANTED INVASION
OF THE PERSONAL PRIVACY OF
OTHERS,**

(D) COULD REASONABLY BE EXPECTED TO

FREEDOM OF INFORMATION ACT

Exemptions

**(b) (7) APPLIES TO RECORDS OR INFORMATION
COMPILED FOR LAW ENFORCEMENT PURPOSES
THAT:**

**(E) WOULD DISCLOSE INVESTIGATIVE TECHNIQUES
AND PROCEDURES OR,**

**(F) COULD REASONABLY BE EXPECTED TO
ENDANGER THE LIFE OR PHYSICAL SAFETY
OF ANY INDIVIDUAL.**

(b) (8) REPORTS ON FINANCIAL INSTITUTIONS.

**(b) (9) GEOLOGICAL AND GEOPHYSICAL
INFORMATION CONCERNING WELLS.**

FOIA PROCESSING

- **SEARCH**
- **REVIEW**
- **SD FORM 472**
- **DOD FORM 2086**

REASONABLE SEGREGATION

- **REASONABLY SEGREGABLE PORTIONS MUST BE RELEASED TO THE REQUESTER WHEN IT REASONABLY CAN BE ASSUMED THAT A SKILLFUL AND KNOWLEDGEABLE PERSON COULD NOT RECONSTRUCT THE EXCISED INFORMATION.**
- **AMOUNT OF DELETED INFORMATION INDICATED BY BRACKETS OR DARKENED AREAS**
- **AREAS WILL NOT BE LEFT “WHITE” WITHOUT THE USE OF BRACKETS TO SHOW THE BOUNDS OF DELETED INFORMATION.**

UNCLASSIFIED

Proprietary Rights. According to the NAVAIR program manager, the reason for not breaking out [REDACTED]s for direct purchase [REDACTED] [REDACTED] special tooling for the [REDACTED] gearboxes.

[REDACTED] competitively on an Air Force contract (F41602-82-D-0040) for [REDACTED] gearboxes in the mid-1982. [REDACTED] documentation indicated that the special tooling in question had been paid for by the Government [REDACTED] no objection to its use on a nonin [REDACTED] [REDACTED] [REDACTED]. We [REDACTED] that contract -0013 contains a special tooling clause which appears to us to give the Government full rights to usage (Defense Acquisition Regulation 7-104.25). Even if a legal claim for proprietary rights could be established by [REDACTED] For example, the Navy's Aviation Supply Office in Philadelphia, Pennsylvania, purchased the identical speed decrease gearboxes directly from General Electric. General Electric's price to Navy's Aviation Supply Office under a basic ordering agreement (F34601-79-G-0213-GBMT) for 46 gearboxes ordered in August 1981 was \$79,968 each, for a total of \$3,678,528. This unit price is substantially lower than the \$124,880 price negotiated by NAVAIR with Kaman in June 1982 on contract -0113 (\$4,495,698 divided by 36). The following section shows potential savings by breaking out these items.

Potential Savings by Breakout. DCAS files showed that DCAA, DCAS, and the Navy Procurement Contracting Officer (PCO) recommended the gearboxes for breakout. Also, DCAS officials have stated that the overhead and profit charged by General Electric and Kaman were excessive and the PCO was so informed. The [REDACTED] decision on price and whether to break out the buy, howe [REDACTED] January 11, 1983 memorandum the NAVAIR program [REDACTED] although breakout could save costs, the contractor furnished equipment method was being used [REDACTED] problems and the time lag since it last manufactured this part. We were told that [REDACTED] however, no reason [REDACTED] the program manager for not buying the [REDACTED].

UNCLASSIFIED

We also found no evidence [REDACTED] [REDACTED] adversely affected delivery of helicopters to the Government on the Navy contracts cited previously.

FEES

CATEGORY

CHARGEABLE

FEES

COMMERCIAL

**SEARCH, REVIEW AND
DUPLICATION**

**EDUCATIONAL/
NONCOMMERCIAL
SCIENTIFIC
INSTITUTIONS AND
NEWS MEDIA**

DUPLICATION ONLY

ALL OTHERS

**SEARCH AND
DUPLICATION**

FEE DEFINITIONS

- **SEARCH**

- **ALL TIME SPENT LOOKING**
- **TIME TO DETERMINE IF DOCUMENT RESPONSIVE**
- **MAY CHARGE FOR NO RECORDS**
- **MANUAL OR COMPUTER**

- **REVIEW**

- **EXAMINING FOR EXEMPTIONS**
- **EXCISION TIME**
- **CHARGEABLE ONLY TO COMMERCIAL REQUESTERS**
- **INITIAL REVIEWS**

- **DUPLICATION**

- **DUPLICATING COPY FOR REQUESTER**